McCormick Dray Lines, Inc. *and* Teamsters Local Union No. 764, International Brotherhood of Teamsters, AFL–CIO. Case 4–CA–22380

April 28, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

On October 7, 1994, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, McCormick Dray Lines, Inc., Muncy, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In contending that it need not supply information requested by the Charging Party, the Respondent argues, inter alia, that a subcontracting clause contained in its collective-bargaining agreement with the Charging Party allows it to transfer work to owner operators. Thus, the Respondent argues, it is not in violation of the contract. We find that the Charging Party's request for information was not based exclusively on the subcontracting clause, and that the General Counsel has established that the Charging Party had an objective factual basis for believing that the Respondent was transferring work in violation of the parties' collective-bargaining agreement.

The Respondent also maintains that the Charging Party conceded at the hearing that two of the entities about which it seeks information—McCormick Contracting of Massachusetts and McCormick Contracting of South Carolina—do not exist. The General Counsel, however, explicitly declined to concede this point at the hearing. Further, even assuming arguendo that the two companies did not exist as of the time of the hearing, that does not mean that they did not exist as of the time of the request for information. Respondent's owner testified that, at some time *after* the request, he told the Union that the companies did not exist. Of course, even if this testimony is credited, it does not establish the nonexistence of the companies at the time of the request. If the companies existed then, or at a time that could be covered by a contractual claim by the Union, information concerning them would be relevant. In our view, the issue of when these companies existed can be resolved in compliance.

Sheila Mayberry, Esq., for the General Counsel.
Charles J. McKelvey, Esq., for the Respondent.
Donald E. Deivert, for the Charging Party.

DECISION

FRANK H. ITKIN, Administrative Law Judge. An unfair labor practice charge was filed in this case on January 18 and a complaint issued on February 25, 1994. The complaint was later amended at the hearing. The General Counsel alleged in the complaint that Respondent Employer violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to furnish to Charging Party Union certain requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining agent of an appropriate bargaining unit of the Employer's employees. Respondent Employer, in its answer, denied violating the Act as alleged. Accordingly, a hearing was held on the issues raised on August 4, 1994, in Willamsport, Pennsylvania, and on the entire record thus made, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Respondent Employer is engaged in the interstate and intrastate transportation of freight with facilities in Muncy, Pennsylvania, and is admittedly an employer engaged in commerce as alleged. Charging Party Union is admittedly a labor organization as alleged. The Employer and the Union are parties to a collective-bargaining agreement, effective from November 25, 1991, to November 24, 1994, covering an appropriate unit of the Employer's local drivers and road drivers.[1] The collective-bargaining agreement contains, inter alia, grievance and arbitration provisions. (See G.C. Exh. 2.)

On December 28, 1993, Donald Deivert, the Union's president and business representative, mailed to James Webb, the Employer's president, a questionnaire to be filled out and returned by January 3, 1994. See appendix A annexed to the complaint filed in this proceeding. The Employer admittedly did not furnish the information as requested. Deivert explained that he had requested this information because he had ''come to the conclusion that'' the Employer ''was trying to establish a double breasted operation'' and that the Employer and other named business entities listed below ''were doing our bargaining unit work or were involved in it.'' Deivert assertedly needed the requested information in order to file a grievance under the current collective-bargaining agreement.

Specifically, as appendix A to the complaint shows, Deivert had requested with respect to Respondent Employer McCormick Dray Lines, as well as business entities described as WCI, Avis Truck Service, McCormick Contracting of PA, MA and SC, and CK Services of New Jersey, the following information: A description of the types of businesses in which they are engaged; the geographical areas in which they do business; their business addresses and office locations; their post office box numbers and locations; their business telephone numbers and directory listings; their banking institutions with branch locations and account numbers; their banking institutions with branch locations and account numbers of their payroll accounts not identified above; where and by whom their accounting records are kept; their principal accountants, bookkeepers, and payroll preparers; where and by whom their corporate records are kept; where and by whom their other business record books are kept; their workers' compensation insurance carriers with policy numbers;

[1] As Union President and Business Representative Donald Deivert explained, ''Local drivers work within . . . the area of Williamsport and they're home every day. Road drivers may be gone from one to five days.''

their other health insurance program carriers with policy numbers; their Federal taxpayer identification numbers; their other Federal or state taxpayer identification numbers; amounts involved, reasons for and dates of transfer of any funds between McCormick Dray Lines and the other named entities; amounts involved, reasons for and dates of transfer of any funds between their divisions; their sources and amounts of lines of credit; the businesses to whom they rent, lease, or otherwise provide office or warehouse space; their building and/or office suppliers; businesses that use their tools, equipment, or vehicles; businesses to whom they sell, rent, or lease their operating, warehouse and office equipment, tools or vehicles; businesses from whom they buy, rent, or lease their equipment; their equipment transactions arranged by written agreement; customers that are now or were formerly customers of the above entities; any jobs that they have bid with customer and dollar amounts; customers that they have referred to the above entities with dollar amount and reasons thereof; their corporate officers, directors, supervisors, and representatives actively involved with day-to-day operations; places and dates of their directors' meetings; their owners and/or stockholders and their ownership interests in the above entities or any other company; companies to whom they sell their customers' accounts; the relationship between McCormick Dray Lines and the above entities; dates when they commenced operations; other businesses or corporations with which James Webb is associated; and how the equipment (tractors and trailers) used by them is registered and licensed and their ICC numbers are registered.

In support of the above request for information, Deivert testified that his Union has represented the Employer's unit drivers for over 40 years; that the unit employees struck the Employer during January 1993 for approximately 2 weeks; and that he had observed and had been given the following ''information'' by employees ''about other companies'' using the Employer's facility:

> I witnessed McCormick Contracting trucks going into . . . WCI, Webb Communications. I witnessed WCI trucks going into McCormick terminals there at Muncy and hauling freight, general freight. . . . McCormick Contracting . . . is a nonunion trucking company that Mr. Webb owns. . . . WCI . . . stands for Webb Communications, Inc.

Deivert testified that before the strike there had been some 62 to 68 unit drivers at the Employer's Muncy facility, and that after the strike the Employer made ''quite a few changes'' and the ''numbers decreased.'' He explained:

> The changes were, the freight that we used to haul we no longer hauled anymore. We started to see it being run by the 15 individuals who crossed over the [Union's] picket line . . . [and are now] working for McCormick Contracting. And also Mr. Webb created the job for one of the gentlemen that crossed over the line in our bargaining unit which was not in any agreement. He created a local job for one of the individuals, and at the time McCormick Contracting did not have any local positions . . . out of the Muncy terminal. . . . After the strike . . . McCormick Contracting started to get dispatches from the Muncy terminal. . . . [T]hat didn't happen prior to the strike . . . with these local guys.
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> . . . .
>
> I'm talking about the 15 individuals that crossed over the picket line and went to work for McCormick Contracting. They were supposed to work strictly out of Stone Container in Williamsport. And they ended up getting dispatched at the window off of the dispatch sheet along with our Dray Lines drivers and actually hauled some of our Dray Lines freight.
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> . . . .
>
> Stone Container is an account Mr. Webb has. He services them. They used to have their own trucks. And now he has gone in there and supplied them with jockeys and his equipment, his tractors and drivers to jockey the trailers in and out daily as they load them and also deliver their loads.

Deivert observed:

> [W]e were . . . losing jobs . . . ended up getting the less desirable loads . . . we did not have a pick of the whole dispatch . . . we were more or less assigned to loads rather than being able to pick like we normally picked . . . McCormick Contracting was getting the preferential loads . . . When these individuals crossed over . . . the trucks they were driving said Dray Lines on them . . . . They [later] had pulled the Dray Lines stickers off and put McCormick Contracting stickers on the trucks.

See also General Counsel's Exhibits 3 and 4 and transcript pages 22–35, indicating that the ''total road drivers went down'' after the strike.[2]

Deivert next testified that the Union and the Employer had ''an agreement with respect to the local drivers after the strike.'' He explained:

> We had an agreement with the 15 drivers that crossed over [the Union's picket line] . . . they would take the Dray Lines jobs . . . at Stone Container . . . [W]e negotiated that he [Webb] would put the Stone drivers there and they would work strictly out of Stone Container, [but] that did not happen. [Further,] there was . . . an agreement that there would be ten [unit local drivers, but] we never did get the tenth one.

Deivert also spoke to ''applicants applying for jobs at McCormick Dray Lines'' after the strike. According to one ''applicant,''

> [H]e [had] applied for a job there [at McCormick] and they told him they had two companies, one non-Union and one Union. He had preferred to work Union because [he was] in the Union and asked . . . about the benefits . . . [and] his pension. And they said . . . McCormick Dray Lines does have a pension ; McCor-

[2] Counsel for Respondent Employer does not dispute that ''the total number [of unit jobs] went down after the strike.'' Counsel for Respondent Employer asserts, inter alia, that the decrease in unit jobs was ''a result of the strike . . . we lost business . . . 15 of the unit drivers quit the Union . . . [and] went to work for [McCormick] Contracting.'' (See Tr. pp. 34–35 and 12.)

> mick Contracting is the one with a 401(k); McCormick Dray Lines was not hiring but McCormick Contracting was.

Deivert identified General Counsel's Exhibit 5(a) as containing an advertisement by McCormick Contracting appearing in the Williamsport newspaper on January 4, 1993, for ''truckdrivers'' ''to deliver freight to customers in the Eastern United States.'' General Counsel's Exhibit 5(a) also contains an advertisement by WCI for ''over the road truckdrivers.'' Deivert identified General Counsel's Exhibit 5(b) as containing an advertisement by McCormick Contracting appearing in the Williamsport newspaper on March 5 for ''truckdrivers,'' and General Counsel's Exhibit 5(c) as containing an advertisement by McCormick Contracting appearing in the Williamsport newspaper on October 2 or 3 for ''truckdrivers.'' Applicants were instructed in the latter advertisement to ''apply'' at ''McCormick Lines'' in Muncy. Deivert spoke to Patti Kessling, vice president of the Employer, ''concerning the way the applicants were being hired.'' According to Deivert, Kessling said:

> they were bring[ing] them [the applicants] in . . . ''interviewing them and giving them their choice whether they wanted to go Union or non-Union.''

Deivert protested to Kessling that ''we never had that prior to the strike''; ''Dray Lines hired and we never heard about the Contracting side.'' Deivert also complained to Respondent Employer's president, Webb. On one occasion, Webb said that the Employer ''would run some Dray Lines ads.'' Later, after Deivert again complained about the Employer's use of ''McCormick Contracting'' and then ''McCormick Dray Lines'' advertisements, Webb acknowledged that ''it's really a fictitious name'' and ''he had decided to just say McCormick Lines was hiring.''

Deivert also recalled, with respect to CK Services,

> During the strike we had seen some of the CK Services trucks cross our picket lines and on two occasions two of their drivers were pulling trailers and we assumed they were our loads . . . they were pulling trailers in and out of our picket lines . . . we normally didn't see them. And . . . talking to Herm Chilson, Tom Montgomery and the other drivers, they made me aware of CK Services and what it was . . . it was supposed to be Jim Webb's wife's company in New Jersey.

Deivert also spoke with Gordon Scott, business agent for Teamsters Local 560, during the fall of 1993. Deivert explained to Scott ''the problems . . . with the strike and trying to get [his] people back to work . . . and that some of [Scott's] people were in there'' at the Muncy facility. Scott then apprised Deivert that CK Services was ''under a Teamsters contract''; ''they had had the same problems with CK Services . . . the Company had tried to open a non-Union trucking outfit in the same building''; the nonunion company was McCormick Contracting; and the Union ''had filed charges.''

Deivert also recalled, with respect to WCI, that during the 1993 strike, the Union ''set up a picket line at the WCI building.'' He then observed and pickets also related to him that ''McCormick Contracting'' trucks ''were going in and out there'' and, on one occasion, a WCI truck was ''pulling [a] McCormick trailer.'' WCI trucks also ''came into'' McCormick Dray Lines facility and McCormick Dray Lines trucks went into the WCI facility. After the strike, he observed McCormick Contracting trucks ''doing the same type of work.''

Deivert also recalled, with respect to Avis Truck Service, that he had observed after the 1993 strike that the Avis Truck Service office was ''adjacent to the Dray Lines office'' in the Employer's same facility at the Muncy terminal; ''there's just a door that separates them''; the same ''receptionist'' serviced both entities; and ''Avis Truck Service was part of the dispatch operation there in the dispatch office.'' In addition, as Deivert noted, the current collective-bargaining agreement between the Union and the Employer provides (G.C. Exh. 2, art. XX):

> In the event that the Company shall transfer its operating authority to Avis Truck Services, Inc., it shall impose as a condition of said transfer a requirement that Avis . . . shall, in purchasing said authority, recognize and be bound by the terms of this agreement.

Further, Deivert was also receiving complaints from the unit drivers that they were now being ''assigned'' ''jobs'' instead of being allowed ''to pick [jobs] in seniority order.'' Deivert met with Webb. He protested to Webb that he had ''come to the conclusion that they [the other named business entities] were doing our bargaining unit work'' and that the Employer ''was trying to establish a double breasted operation.'' Deivert related to Webb ''why'' he was submitting the above information request. Deivert needed this information to file a grievance under the current collective-bargaining agreement. Webb denied Deivert's claim of a ''double breasted operation.'' Webb, however, informed Deivert that ''I [Webb] would be a fool to give you any information or answer any of them questions.''[3]

Gordon Scott, business agent and trustee for Teamsters Local 560 in Union City, New Jersey, testified that his local has a collective-bargaining agreement with C&K Services (also appearing as CK Services in the record); that General Counsel's Exhibit 6 is a 1991 arbitration award arising out of that agreement; that during September or October 1993, Deivert, president and business representative of sister Local 764, had informed him ''that he was having a problem with

[3] On cross-examination, Deivert testified that the current 1991–1994 collective-bargaining agreement between the parties contains ''no-strike'' provisions in art. XVII; that art. VII of the agreement provides, inter alia, that ''the work force shall consist of 16 road drivers and 6 local drivers'' and the ''Company agrees to replace any of the present 22 employees during the term of this agreement with a new hire''; that the Employer has gone ''below the required number of people as stated in the contract'' although no grievance was filed; that art. XXI of the agreement provides that ''nothing contained in this agreement shall be construed as a limitation on the authority of the Company to use, either load or unload, owner-operators or brokers inside or outside of the 65-mile local radius''; that 15 unit employees ''resigned'' from the Union during the January 1993 strike and ''continued to work during the strike''; and that the parties entered into a strike settlement agreement providing, inter alia, that the Employer's ''Stone Container work would be assigned to people who were not part of the McCormick Dray Lines bargaining unit.''

McCormick Dray Lines'' and ''asked if [Scott] had any similar problems''; and that Scott then apprised Deivert of the 1991 award in favor of Local 560. As General Counsel's Exhibit 6 shows, the arbitrator found in that proceeding that C&K Services had violated its agreement with Local 560 by refusing to bargain with or recognize the Union as bargaining agent for delivery employees at its Linden, New Jersey facility; by failing to notify the Union when delivery employees were hired at the Linden facility; and by refusing the Union the right to send applicants for new delivery jobs at the Linden facility. The arbitrator noted:

> GHM Enterprises is owned and operated by James A. Webb, who is president and sole stockholder of James A. Webb, Inc. He is also the husband of C. Webb, the president of the Employer [C&K Services]. In addition to owning GHM Enterprises, James A. Webb also owns . . . McCormick Contracting, McCormick Dray Lines, Avis Truck Services, McCormick Air Freight and Lycoming Sales And Leasing, Inc. . . . James A. Webb, Inc., the parent company of the above companies, was founded in 1983 and its corporate offices are located in Muncy, Pennsylvania. The Employer utilizes various equipment, such as tractor trailers from McCormick Contracting and Avis Truck Lines, etc., and is billed accordingly by each particular company for such service.
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> J. Webb, the owner of McCormick Contracting in Linden and GHM Enterprises, is an active participant in the management and control of the Employer's [C&K Services] operation in Teterboro. While it may be that C. Webb, his wife, signs all documents, including the [collective-bargaining agreement], it is clear from the evidence that it is J. Webb who makes the decisions. It is difficult to comprehend how an individual who acts as chief spokesperson in all negotiations . . . and makes all decisions regarding conditions of employment, and is involved with disciplinary matters with the Union, can testify that McCormick Contracting and this Employer are separate and distinct business entities. This is the same individual, J. Webb, who admitted that it was his decision to take freight away from his other companies and give it to this Employer. It was also J. Webb who then transferred the same freight to McCormick Contracting in Linden. The vehicle for these arbitrary transfers of freight at whim is GHM enterprises, which is also owned and controlled by J. Webb. It is apparent . . . that while J. Webb may not own stock or sign any documents on behalf of the Employer, it is he who decides what does and what does not happen at the Employer's Teterboro facility, as well as his other companies, including McCormick Contracting of Linden. . . . McCormick Contracting of Linden is the alter ego of this Employer.

Thomas Montgomery is a driver for Respondent Employer McCormick Dray Lines and has also served as union steward. Montgomery testified that he was involved in the 2-week strike during January 1993. He observed CK Services trucks ''going in and out of the Muncy terminal'' during and shortly after the strike. He also observed ''McCormick Contracting trucks located at the WCI building in Williamsport'' ''from the moment we came off the strike up to the present.'' During the late summer of 1993, he observed from viewing the Employer's dispatch sheets at the Muncy facility that ''there were two sheets,'' ''one was a Union driver dispatch sheet and the other one was for the [non-Union] drivers,'' ''the non-Union Company . . . [was] McCormick Contracting.'' He used, before the strike, ''equipment leased to us from the Avis Equipment Company,'' and he ''was using different equipment after the strike.'' He explained that ''we were displaced from our regular units [equipment]'' which ''was reassigned to another individual'' from ''McCormick Contracting.'' Later, during the fall of 1993, he attended a union meeting where the union employees complained ''that the Dray Lines lost a lot of our work to McCormick Contracting drivers and . . . we were displaced from our regular units . . . trucks'' and ''given less desirable units to run.'' Deivert was apprised of the above observations.

Herman Chilson is also a driver for Respondent Employer McCormick Dray Lines. He observed that ''after the strike'' ''we lost Stone Container, a lot of freight we were hauling is being hauled by McCormick Contracting,'' McCormick Contracting ''is hauling'' work ''that has traditionally been McCormick Dray Lines' work.'' Chilson testified:

> Q. Now, with respect to . . . Stone Container, apparently there were about 15 [unit] drivers who switched from McCormick Dray Lines to McCormick Contracting?
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> A. Yes.
>
> Q. For solely the Stone Container work?
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> A. That was the way I understood it, yes.
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> Q. Are those 15 drivers doing work other than the Stone Container work?
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> A. Yes.
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> Q. What work are they doing besides Stone Container?
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> A. They are all freight.

He has also observed CK Services trucks ''after the strike'' ''in the yard'' at ''the Muncy terminal.'' He too related the above observations to Deivert.

James Webb testified for Respondent Employer. In 1984, J. A. Webb, Inc. purchased several companies from G. Henry McCormick, and McCormick Dray Lines was one of those companies. James Webb is president of both J. A. Webb, Inc. and McCormick Dray Lines. McCormick Dray Lines is a common carrier operating under the Interstate Commerce Commission (ICC). (See C.P. Exh. 1.) The Union, Teamsters Local 764, has represented McCormick Dray Lines' employees since about 1953, and the parties have entered into successive collective-bargaining agreements. The current collective-bargaining agreement between the parties, as noted, is effective from November 25, 1991, to November 24, 1994. (See G.C. Exh. 2.) McCormick Contracting Company, Inc., another of the acquired companies from G. Henry McCormick, is authorized by ICC to operate as a contract carrier by motor vehicle in interstate or foreign commerce over irregular routes under continuing contracts with GHM Enterprises, Inc. of Muncy, Pennsylvania. GHM Enterprises is similarly another acquired company of the Employer. (See C.P. Exh. 2 and G.C. Exh. 6.)

James Webb is sole owner of Webb Communications, Inc. (WCI), and that Company has a collective-bargaining agree-

ment with Graphic Communications International Union Local No. 160M, effective from February 1, 1992, through January 31, 1995. (See C.P. Exh. 4.) WCI ''prints newspaper type products and then mails them through the U.S. Mail.'' James Webb asserted that WCI ''does not . . . do any over the road [or] local trucking'' of ''freight,'' however, it does ''local trucking'' ''with a parcel type van.'' In addition, CK Services, Inc. is owned by James Webb's wife, Carol Webb. CK Services has a collective-bargaining agreement with Teamsters Local Union No. 560, effective from April 1, 1991, to April 1, 1994, renegotiated thereafter for an additional term. CK Services ''services Stone Container in Teterboro, New Jersey.'' (See C.P. Exh. 5.)

As noted, McCormick Dray Lines' employees struck the Employer for about 2 weeks during January 1993. Webb identified Charging Party's Exhibit 6 as ''a document that the Companies offered the Union when they came back to work.'' Charging Party's Exhibit 6, unsigned and dated January 29, 1993, provides, inter alia,

> 6. The Union agrees not to contest in any way jobs associated with Stone Container, Williamsport, and their contract with McCormick Contracting Co., Inc.
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> 7. The Company will work with the Union to place the returning drivers who formerly hauled Stone Container into permanent classifications. The Company is open to any suggestions from the Union as how these employees can best be assimilated into the work force in the most expedient manner.

James Webb testified that Charging Party's Exhibit 6 is the strike settlement agreement between the parties, that Stone Container had a ''contract'' with GHM Enterprises and McCormick Contracting Co., Inc. and ''there were 15 or 16 jobs at Stone Container,'' that the Union had picketed ''Stone Container during the strike,'' and that

> Stone Container issued us an ultimatum. Stone Container took us to task because their contract was with GHM Enterprises and McCormick Contracting and they couldn't understand why they were being subjected to picketing by McCormick Dray Lines employees . . . . [They] put us on notice that we either service them . . . in the fashion their contract called for or they would find someone else to service them.

James Webb claimed that no ''driver'' had been ''laid off'' who was ''covered by the Union's collective bargaining agreement.'' Further, James Webb claimed that ''if you're going to haul freight under those ICC rights of McCormick Dray Lines, that freight has to be hauled under one of your published tariffs.'' (See also Tr. pp. 96–99 and C.P. Exhs. 7–9.) In addition, James Webb identified Charging Party's Exhibit 10 as a letter from Respondent Employer dated December 31, 1992, sent to Union President and Business Representative Deivert, stating, inter alia, that the ''Company will consider'' any strike by the Union ''a material breach of contract and will take every lawful action to defend itself and continue to operate the business.''

James Webb asserted that Avis Truck Service, Inc. is a Pennsylvania corporation ''that buys, sells, leases and maintains rolling stock, primarily tractors and trailers,'' employs ''sales people, administrative people and mechanics,'' and ''is not involved in the transportation of freight.'' James Webb added that the Union ''does not represent any mechanics'' as part of the McCormick Dray Lines unit, and Avis Truck Service ''does not do any work . . . covered by the Dray Lines contract with the Teamsters Local Union.'' James Webb acknowledged that Avis Truck Service was also purchased by him from G. Henry McCormick when he ''purchased Dray Lines and Contracting.''

James Webb next identified Charging Party's Exhibit 11 as purportedly containing ''answers to'' Deivert's ''questionnaire,'' which is the subject of this proceeding. According to James Webb, ''these answers respond to some of the questions,'' and ''respond to questions concerning McCormick Dray Lines in a limited fashion in regard to CK Services, Avis Truck Service and Webb Communications.'' This limited information was first made available to the Union during the examination of James Webb at this hearing. James Webb asserted that ''there is no such company'' identified in the ''questionnaire'' as ''McCormick Contracting of Massachusetts'' or ''McCormick Contracting of South Carolina.'' He insisted that there is only ''McCormick Contracting'' of Pennsylvania.

James Webb cited provisions in the 1991–1994 collective-bargaining agreement with the Union providing, inter alia, that the ''work force shall consist of 16 road drivers and 6 local drivers'' (G.C. Exh. 2, p. 29), and for ''use of owner operators'' (p. 47). James Webb acknowledged that the contractual references to 16 road drivers and 6 local drivers are ''limitations'' or ''minimum numbers'' and there were ''more people doing this unit work than is limited in this contract.'' James Webb assertedly relied on these contractual provisions in refusing to supply the requested information. In addition, James Webb also relied on his claim that ''some of this [requested] information'' is ''privileged, confidential, commercial information which would be prejudicial to the Company''; ''a lot of that information is extremely proprietary information . . . extremely sensitive information''; and the Employer assertedly is ''under contract with several of our customers not to divulge that type of information.''

James Webb asserted, as noted, that McCormick Dray Lines ''never laid an employee off'' and, in addition, that ''the numbers of drivers'' went ''down after the strike'' because the ''market place'' was ''in a recessionary time'' and ''18 McCormick Dray Lines drivers [had] resigned from the Union and went to work for McCormick Contracting'' ''because of the strike.'' According to James Webb,

> I [Webb] recollect that there were 18 drivers who resigned from the Union and McCormick Dray Lines. In addition, there were another . . . roughly 15 jobs at Stone Container, that Stone Container was under contract [with] McCormick Contracting, and as I noted earlier Stone Container just absolutely insisted that McCormick Contracting provide them the service. So, that is 18 and 15 . . . 33. There were roughly 60 drivers in McCormick Dray Lines at the time of the strike . . . Right now today I believe the number on the roster at McCormick Dray Lines is 29.

James Webb denied in part testimony of Union Representative Deivert with respect to the identity of various unit employees. (See Tr. pp. 108–109.) He insisted that there were

no ''guarantees for nine and ten local drivers.'' The strike settlement agreement, as quoted above, stated that ''the Company will work with the Union to place the returning drivers who formerly hauled Stone Container'' and ''is open to any suggestions from the Union,'' ''and if I [James Webb] am not mistaken we brought the last couple back and put them to work locally.'' James Webb claimed that McCormick Dray Lines has in fact ''hired maybe half a dozen new drivers'' during 1994 and ''I don't believe there's been anyone hired in McCormick Contracting.'' And, James Webb insisted that he ''told Mr. Deivert on many occasions any drivers that he had for us to hire . . . to send them to me personally . . . I'll hire any competent qualified drivers''—''there is a driver shortage today.''

James Webb also testified:

> Q. This Webb Communications, Inc. advertisement for a truck driver, does Webb Communications have any truck drivers in its bargaining unit?
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> A. No.
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> Q. Why was that advertisement put in?
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> A. This was January 4, 1993 and this was after it had been reported . . . that they [the Union] didn't really feel bound to honor the terms of the contract and they were going to strike us any way. . . . I told the people at Webb Communications that they better make plans to be able to get their own products to market and not depend on anybody else . . .

James Webb, when asked ''about CK Services trucks at the Muncy terminal during the strike,'' responded:

> Not to my knowledge. I couldn't imagine that trucks of another Teamster Local would come and cross the picket line. I just can't imagine that, but I did not see it.

On cross-examination, James Webb acknowledged that McCormick Dray Lines does ''deliver freight'' into the ''WCI loading dock,'' and that is also ''true of McCormick Contracting.'' He acknowledged that he did ''not know'' ''if anyone [had] ever signed off on'' Charging Party's Exhibit 6, the so-called strike settlement agreement between the parties. He acknowledged that ''McCormick Contracting has an operation in Rocky Mountain, North Carolina,'' and ''before the strike most of the McCormick Contracting drivers were dispatched out of the North Carolina terminal.'' He acknowledged that ''after the strike . . . all if not most McCormick Contracting drivers are being dispatched from the Muncy terminal.'' He acknowledged that ''we serviced ADS at Ludlow, Massachusetts . . . in 1990 or 1991'' under ''McCormick Contracting.'' He acknowledged that McCormick Dray Lines did ''Stone's work . . . before the strike'' although assertedly ''the contract has always been held by GHM Enterprises and McCormick Contracting.'' He acknowledged that ''once [he] received an account for McCormick Contracting that McCormick Dray Lines would also do that work.'' Further, he acknowledged that he previously did not supply any of the requested information to the Union and previously did not ''propose any specific language dealing with confidentiality of any'' of the requested information.

Much of the testimony and evidence summarized above, insofar as relevant or pertinent to the narrow issue raised here, is not disputed. Further, I credit the above testimony of Deivert, Scott, Montgomery, and Chilson. Their testimony is in significant part mutually corroborative, substantiated by admissions of the Employer's president, Webb, and substantiated by undisputed documentary evidence. And, relying on demeanor, they also impressed me as trustworthy and reliable witnesses. On the other hand, I was not impressed with the testimony of Webb. His testimony was at times incomplete, unclear, and evasive. He did not impress me as a reliable or trustworthy witness. Insofar as his testimony conflicts with the above testimony of Deivert, Scott, Montgomery, and Chilson and the documentary evidence of record, I credit the testimony of the latter witnesses and documentary evidence as more complete and reliable.

Discussion

The sole issue for resolution here is whether or not the General Counsel has sufficiently demonstrated the requisite relevancy and necessity for the Union's requested information. As restated in *Maben Energy Corp.*, 295 NLRB 140 (1989),

> Under settled principles of labor law, ''an employer is obligated to provide a union with requested information if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive collective bargaining representative.'' The issue in such a case is ''whether the requested information had probable and potential relevance to the union's statutory obligation to represent employees within the contractual unit''; ''the fact that the requested information may relate to employers and employees outside the represented bargaining unit does not by itself negate its relevance''; for, whatever the eventual merits of the union's claim that [its] contract [is] being violated and [its] bargaining unit unlawfully diminished, [it is] entitled to the requested information under the discovery type standard announced in *NLRB v. Acme Industrial Company*, 385 U.S. 432, 437 (1967), to judge for [itself] whether to press [its] claims in the contractual grievance procedures or before the Board or Courts. . . . And, where a union seeks information to establish an alter ego or single employer relationship, it is not required to prove the existence of such relationship, rather it is sufficient ''that General Counsel has established that the union had an objective factual basis for believing'' that one entity is an ''alter ego or single employer of the other. [See cases cited.]

In *Maben*, the Board agreed that ''probable and potential relevance'' had been ''amply demonstrated.'' The Board held that the employer's ''refusal'' to supply the requested information there was not ''justified'' because assertedly ''some of the requested information was confidential,'' noting, inter alia, that

> [R]espondents raised confidentiality concerns for the first time at the hearing and at no time complied with the duty to come forward with some offer to accommodate its concerns with its bargaining obligation.

Applying the above-settled principles of law to the instant case, I find and conclude that here too the General Counsel

has sufficiently demonstrated ''probable and potential relevance'' for the requested information. Union President Deivert requested the above information because he had ''come to the conclusion that'' the Employer ''was trying to establish a double breasted operation'' and that the Employer and its other named business entities ''were doing our bargaining unit work or were involved in it.'' Deivert needed the requested information in order to file a grievance under the current collective-bargaining agreement. Deivert detailed the basis for his ''conclusion.'' His testimony was corroborated by Scott, Montgomery, and Chilson. McCormick Contracting trucks were observed going into WCI's facility; WCI trucks were observed going into McCormick Dray Lines facility ''hauling . . . general freight'' and ''pulling [a] McCormick trailer''; McCormick Contracting ''started getting dispatches from the Muncy terminal'' of McCormick Dray Lines; the total unit employees of McCormick Dray Lines significantly decreased after the strike and McCormick Contracting drivers were ''getting dispatched at the window off of the dispatch sheet with . . . Dray Lines drivers'' and they ''actually hauled [unit] Dray Lines freight''; McCormick Dray Lines unit employees ''ended up getting less desirable loads,'' ''did not have a pick of the whole dispatch,'' and McCormick Contracting drivers got ''the preferential loads,'' using the same ''trucks'' with ''McCormick Contracting stickers'' substituted for ''Dray Lines''; job applicants were being told that the Employer had two companies, one union (McCormick Dray Lines) and one nonunion (McCormick Contracting), they were interviewed by the same person or persons and given the choice between ''want[ing] to go Union or non-Union''; job advertisements for McCormick Dray Lines and McCormick Contracting were used interchangeably and were ultimately grouped under one ''fictitious name,'' ''McCormick Lines''; CK Services drivers were also ''pulling trailers in and out of [the Union's] picket lines'' ''hauling'' unit work; and Avis Truck Service used the ''same receptionist'' and shared the same facility with McCormick Dray Lines and ''was part of the dispatch operation in the office'' at Muncy.

Further, as unit driver Montgomery explained, he had observed CK Services trucks ''going in and out of the Muncy terminal''; ''McCormick Contracting trucks [were] located at the WCI building in Williamsport'' ''from the moment we came off the strike up to the present''; and ''there were two [dispatch] sheets [at the Muncy terminal], one was a Union driver dispatch sheet and the other one was for the [non-Union] drivers,'' ''the non-Union Company . . . [was] McCormick Contracting.'' He had used, before the strike, ''equipment leased to us from the Avis Equipment Company,'' and he ''was using different equipment after the strike.'' He explained that he was ''displaced from our regular units [equipment]'' which ''was reassigned to another individual'' from ''McCormick Contracting.'' In short, he and his unit coworkers had observed and complained to the Union ''that the Dray Lines [had] lost a lot of our work to McCormick Contracting drivers and . . . we were displaced from our regular units . . . trucks'' and ''given less desirable units to run.'' In addition, unit driver Chilson confirmed that nonunion McCormick Contracting ''is hauling'' freight ''that has traditionally been McCormick Dray Lines work,'' and was thus performing unit work ''besides the Stone Container'' work, which work assertedly was part of a strike settlement.

Deivert's ''conclusion'' was further confirmed by his conversation with sister Teamsters Local Representative Scott and the arbitration award obtained by that local pertaining to CK Services. As detailed in that award, James Webb owned and controlled the various entities involved in this proceeding and engaged in ''arbitrary transfers of freight at whim'' among these entities similarly using McCormick Contracting to evade his contractual obligations with the Union.

In sum, the General Counsel has sufficiently demonstrated the requisite ''probable and potential relevance'' for the requested information; Union President Deivert reasonably had requested this information because he had ''come to the conclusion that'' the Employer ''was trying to establish a double breasted operation'' and that the Employer and its other named business entities ''were doing . . . bargaining unit work or were involved in it''; and Deivert needed this information in order to file a grievance under the current collective-bargaining agreement. Respondent Employer argues, inter alia, that the above various named entities are separate corporations, and that its collective-bargaining agreement with the Union and its so-called strike settlement agreement with the Union privileged the conduct relied on here. However, the Board is not now being called on to resolve the merits of this controversy, and this record amply shows a reasonable basis for the Union's assertion that the Employer's alleged transfer of unit work was not privileged by the above-cited agreements and related circumstances. Further, Respondent Employer argues that ''some of this [requested] information'' is ''privileged, confidential, commercial information which would be prejudicial to the Company''; ''a lot of that information is extremely proprietary information . . . extremely sensitive information''; and the Employer assertedly is ''under contract with several of our customers not to divulge that type of information.'' However, elsewhere, the Employer acknowledges that it previously did not supply any of the requested information to the Union and did not ''propose any specific language dealing with confidentiality of any'' of the requested information. As Union Representative Deivert credibly recalled, he had protested to Company President Webb that he had ''come to the conclusion that they [the named business entities] were doing our bargaining unit work'' and that the Employer ''was trying to establish a double breasted operation.'' Deivert had related to Webb ''why'' he was submitting the above information request. Webb informed Deivert that ''I [Webb] would be a fool to give you any information or answer any of them questions.''

I therefore find and conclude that Respondent Employer has violated its bargaining obligation under Section 8(a)(5) and (1) of the Act by failing and refusing to provide the above-requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining agent of an appropriate bargaining unit of the Employer's employees. Further, with respect to the Employer's general and unsubstantiated claims of ''confidentiality,'' I find and conclude on the credible evidence of record that the Employer ''at no time complied with [its] duty to come forward with some offer to accommodate its concerns with its bargaining obligation.'' See *Maben*, supra.

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce as alleged.

2. Charging Party Union is a labor organization as alleged.

3. Respondent Employer violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union as the exclusive collective-bargaining agent of an appropriate unit of its local and road driver employees by refusing to furnish the Union with certain information requested by the Union on December 28, 1993 (Exh. A annexed to the complaint filed here), which information is necessary for and relevant to the Union's performance of its function as exclusive collective-bargaining agent of the unit employees.

4. The unfair labor practice found above affects commerce as alleged.

REMEDY

To remedy the unfair labor practice found above, Respondent Employer will be directed to cease and desist from engaging in such unlawful conduct or like and related conduct and to post the attached notice. Affirmatively, to effectuate the purposes and policies of the Act, Respondent Employer will be directed to provide the Union with the information requested by the Union on December 28, 1993 (Exh. A annexed to the complaint filed here), which information is necessary for and relevant to the Union's performance of its function as exclusive collective-bargaining agent of the unit employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, McCormick Dray Lines, Inc., Muncy, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union, Teamsters Local Union No. 764, International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining agent of an appropriate unit of its local and road driver employees by refusing to furnish the Union with certain information requested by the Union on December 28, 1993 (Exh. A annexed to the complaint filed here), which information is necessary for and relevant to the Union's performance of its function as exclusive collective-bargaining agent of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the information requested on December 28, 1993 (Exh. A annexed to the complaint filed here), which information is necessary for and relevant to the Union's performance of its function as exclusive collective-bargaining agent of the unit employees.

(b) Post at its facility in Muncy, Pennsylvania, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Teamsters Local Union No. 764, International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining agent of an appropriate unit of our local and road driver employees by refusing to furnish the Union with certain information requested by the Union on December 28, 1993 (Exh. A annexed to the complaint filed here), which information is necessary for and relevant to the Union's performance of its function as exclusive collective-bargaining agent of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide the Union with the information requested on December 28, 1993 (Exh. A annexed to the complaint filed here), which information is necessary for and relevant to the Union's performance of its function as exclusive collective-bargaining agent of the unit employees.

MCCORMICK DRAY LINES, INC.